STATE OF MICHIGAN

IN THE SUPREME COURT

GEORGE H. GOLDSTONE,

Plaintiff-Appellant,

vs.

BLOOMFIELD TOWNSHIP PUBLIC LIBRARY,

Defendant-Appellee.

Supreme Court No.

Court of Appeals No. 262831 op 11/8/05

LC No. 04-060611-CZ
Oakland County Circuit Court D. Langford Morris

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PLAINTIFF'S APPLICATION FOR LEAVE TO APPEAL

NOTICE OF HEARING

CERTIFICATE OF SERVICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTION

STATUTES

COURT RULES

CASES

ATTORNEY GENERAL OPINIONS

OTHER

STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE 1963 MICHIGAN CONSTITUTIONAL GUARANTEE THAT PUBLIC LIBRARIES "SHALL BE AVAILABLE TO ALL RESIDENTS OF THE STATE" INCLUDES A CONSTITUTIONAL RIGHT TO BORROW BOOKS, SUBJECT TO THE RIGHT OF THE LIBRARY GOVERNING BOARD TO MANAGE, BUT NOT ABOLISH, THAT RIGHT?

Plaintiff-Appellant answers "Yes."

II. WHETHER IT IS A VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS, INCLUDING THE EQUAL PROTECTION CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS TO ALLOW SOME RESIDENTS OF A COMMUNITY TO BORROW BOOKS BUT NOT ALLOW OTHER RESIDENTS OF THAT SAME COMMUNITY, SIMILARLY SITUATED, TO DO SO?

Plaintiff-Appellant answers "Yes."

III. WHETHER IT IS A VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS, INCLUDING THE RIGHT TO READ PROTECTED BY THE 1ST AMENDMENT OF THE FEDERAL CONSTITUTION, FOR A TOWNSHIP PUBLIC LIBRARY TO PROHIBIT RESIDENTS OF A CITY FROM BORROWING ITS BOOKS SOLELY BECAUSE IT FAILED TO COLLECT PAYMENTS FROM THE CITY IT ADMITS WERE BASED ON WHAT IT RECEIVES IN *AD VALOREM* TAXES FROM TOWNSHIP RESIDENTS?

Plaintiff-Appellant answers "Yes."

DATE AND NATURE OF ORDER BEING APPEALED

Plaintiff seeks leave to appeal the Court of Appeals order dated November 8, 2005, affirming the trial court's order denying plaintiff's Motion for Partial Summary Disposition and granting, sua sponte, summary disposition in favor of defendant.

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction to consider this Application for Leave to Appeal pursuant to MCR 7.301(A)(2), this being an appeal from a decision by the Court of Appeals.

INTRODUCTION

This request for leave to appeal brings a dispute to this Court, for the first time in its history, that involves circulation of public library books to Michigan residents.

The Court of Appeals is the first Michigan court in 170 years to rule that:

[a] residents who live in a community without a public library have no right to borrow books from any public library in this state.

[b] public libraries willing to issue individual nonresident library cards to allow book borrowing have no obligation to comply with state law that defines and limits the amount a public library can charge for nonresident library cards.

[c] public libraries willing to contract with communities without a public library can demand payments in any amount even though public libraries are nonprofit organizations.

[d] public libraries willing to contract with communities without a public library can demand payments in any amount even though this court has ruled that if no reasonable relationship exists between the payment and the value of the service or benefit conferred, the payment is a "tax".

[e] public libraries willing to contract with communities without a public library can demand payments from those communities that are based on the *ad valorem* tax revenue the public library receives from its taxpayers, even though only the state Legislature can authorize taxes, and no public library can authorize itself to collect any tax, including *ad valorem taxes,* either directly or *indirectly*, from another community.

[f] public libraries willing to contract with communities without a public library can demand payments from those communities and refuse to disclose any financial records to justify the amount demanded, even though public libraries are public bodies, governed by trustees who have a fiduciary duty to hold and use all library assets in trust for the benefit of the residents of Michigan.

[g] public libraries willing to contract with communities without a public library can conspire with other public libraries to deny book borrowing to the residents of those communities solely to coerce the governing body of those communities to accept the payment and other contract demands of any member of the conspiracy.

[h] public libraries willing to contract with communities without a public library can contract with some residents to allow them to borrow its books but not other residents of the same community who are similarly situated.

This is a dispute involving a library regulation, not a statute, and is limited to book borrowing, for which plaintiff agreed to pay, and not to any other library service.

Although this request for leave to appeal comes from a single Michigan resident, the rights of all 10,000,000 Michigan residents will be affected, directly or indirectly, by the outcome of this case. Plaintiff has raised the above stated issues, [a] through [h], that are ripe for decision and which, if decided, will avoid an escalation in the number of disputes and further litigation.

Plaintiff asks that his Application for Leave to Appeal be granted. His case and the Court of Appeals decision involve issues of significant public policy and interest that affect the rights of 10,000,000 Michigan residents, either directly or indirectly. He has raised legal principles of major significance to the jurisprudence of our state. His appeal is from a clearly erroneous decision of the Court of Appeals that will cause material injustice.

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

Proceedings Below

Plaintiff filed a Verified Complaint for Declaratory Judgment and Other Relief on August 23, 2003.

Plaintiff filed a Motion for Partial Summary Disposition on February 3, 2005. The Court scheduled oral arguments for April 27, 2005. At the hearing on the 27th the Court adjourned the hearing until May 11th directing plaintiff's counsel to ask the City of Bloomfield Hills to consider resuming negotiations with defendant. On May 11th the Court was advised no negotiations had been resumed.

On May 12th the Court signed its Opinion and Order denying plaintiff's Motion

for Partial Summary Disposition. The court granted defendant Summary Disposition, sua sponte, closing the case and aborting all pending discovery motions filed by plaintiff.

On Tuesday, May 17, 2005, plaintiff filed his Claim of Appeal. Oral arguments were held in the Court of Appeals on October 12, 2005. On November 8, 2005, the Court of Appeals affirmed the trial court's order. On December 19, 2005, plaintiff filed this Application for Leave to Appeal.

Material and Undisputed Facts

Facts Taken From Plaintiff's Uncontradicted Affidavit Filed With His Brief on Appeal as Exhibit 8

George H. Goldstone has lived in the City of Bloomfield Hills, Michigan [the "City"] for upwards of 42 years. Prior to termination of the library service agreement [the "contract"] between the Bloomfield Township Public Library [the "Library""] he had a nonresident library card issued by the Library.

The contract ended when the City did not agree to a new 3 year contract that would have increased the City's annual payment from $226,460 to $463,550, more than double, and approximately $1.4 million over the 3 year term proposed.

On May 27, 2004, Plaintiff asked the Library to issue him a nonresident library card, at the same time offering to pay any borrowing fee the Library was entitled to under state law. The Director of the Library refused his request, advising that no resident of the City could have a library card unless the City agreed to sign a library service contract and pay what the library demanded.

The Director of the Library also told him that the Library had a reciprocal agreement with 90 other libraries, by the terms of which they would refuse to allow him to borrow their books.[1]

On November 12, 2004, Plaintiff applied for and was given a nonresident library card by the Pontiac Public library, a member of The Library Network. The card was a Michicard useable at other libraries, including, the West Bloomfield Township Public Library, also a member of The Library Network.

On November 12, 2004 Plaintiff applied for a nonresident library card at the Baldwin Public library in Birmingham, Michigan. He request was refused. He was told that "Baldwin Public Library is a party to a reciprocal agreement with Bloomfield Township Public Library to furnish book borrowing services to Bloomfield Hills city residents only if they present a valid card from the Bloomfield Township Public Library."

He was shown a copy of the letter the Library had sent to all residents of the City advising them that the Library had terminated book borrowing. [That letter is attached to his Affidavit] He was also shown a list of all city street addresses distributed by the Library to insure that the Baldwin library would not lend any of its books to residents of the City.

On November 12, 2004 he applied for a nonresident library card at the West Bloomfield Public Library. He displayed the Michicard he received from the Pontiac Public library. Both libraries belong to The Library Network. His request was refused. He was told "We cannot furnish borrowing services to Bloomfield Hills city residents

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[1] The Court of Appeals found as a fact that books could not be borrowed by city residents at these 90 libraries because the city had no contract with defendant township library. (Opinion, p 1)

unless they have a valid card from Bloomfield Township Public Library." He asked if the Library had a written statement covering its refusal. He was shown the letter from the Library to all City residents [attached to his Affidavit] advising them the library had terminated book borrowing. He was also shown the same list of proscribed Bloomfield Hills street addresses he was shown at the Baldwin Public library.

Facts Taken From Brent Mill's Uncontradicted Affidavit
Attached to Plaintiff's Brief on Appeal as Exhibit 11

Brent Mills is a resident of the City of Bloomfield Hills, which has no public library or public school. He attends Detroit Country Day school located outside the City. Students in his class who live in the township can borrow books from the Library to help complete homework assignments, but he and other students living in the City, in the same class who receive the same homework assignments, cannot.

Before November 13, 2003 he used his nonresident library card from the Library to borrow its books and books from other area libraries, including the Baldwin Public Library, the Troy Public Library, the Rochester Hills Public Library, the Southfield Public Library and the West Bloomfield Public Library. Now he cannot.

Facts taken From Uncontradicted Statements and Admissions of the Library

On September 24, 2003 the Library wrote to all residents of the City to advise that if a contract could not negotiated city residents would not be able to borrow books from it or other "reciprocating libraries such as those in Troy, Rochester Hills, Southfield

and West Bloomfield." [Plaintiff's Brief on Appeal, Exhibit 6]

The Library demanded a 3 year contract with 3 annual payments totaling about $1.4 million dollars. [Plaintiff's Brief on Appeal, Exhibit 18, p 6]

On November 10, 2003 defendant publically announced that as of November 13, 2003, residents of the City, including Cranbrook boarding students and faculty, would not be able to borrow books from the Library. [Plaintiff's Brief of Appeal, Exhibit 6]

The City and the Library had a contractual relationship for over 30 years but it ended because the City and the Library did not agree to a contract "that is in keeping with the commitment of Bloomfield Township residents to support its library." As a result, City residents will not be able to borrow books at over 90 area libraries. [Plaintiff's Brief on Appeal, Exhibit 6]

The president of the Library Board stated publicly that "When Township residents pay an average of $280 per housing unit for library services, it is not acceptable for City residents to continue to pay an average per housing unit of $142 -- nearly half." [Plaintiff's Brief on Appeal, Exhibit 6]

On April 27, 2004 the Library and the Cranbrook Educational Community ["Cranbrook"] signed a 3 year agreement, effective May 1, 2004, allowing all resident students, staff, and faculty at Cranbrook to borrow books from the Library. Under this barter contract , Cranbrook granted limited borrowing of its books, a limited number of passes to be made available to township residents, property owners and employees who have a valid library card from the Library, and other benefits such as free admission to certain Cranbrook facilities. The agreement does not include other libraries. [Plaintiff's Brief on Appeal, Exhibit 12]

The Library is subject to the equal protection clauses of the state and federal constitutions and to the 1st amendment of the federal constitution.

Loss of the contract with the City had minimal affect on the Library's budget. No Library employees were terminated as a result of that loss. [Plaintiff's Brief on Appeal, Exhibit 7, pp 18 and 4, Interrogatories 66 and 6]

Questions during discovery about calculation of nonresident borrowing fees were rejected by the Library as being "hypothetical" and the Library refused to furnish that information. [Plaintiff's Brief on Appeal, Exhibit 13, pp 5-9]

The Library has the right under state law to charge a nonresident borrowing fee. [Plaintiff's Brief on Appeal, Exhibit 13, p 5]

Other Uncontradicted Facts

Plaintiff received a Michicard from the Pontiac Public Library. The Michicard is useable by Michigan residents, no matter where they live, at libraries throughout the state. The West Bloomfield Public library participates in the Michicard program. The Library does not. [Plaintiff's Brief on Appeal, Exhibit 8]

Libraries are classified by the state according to population served. The Library is classified by the state as a Class V library. The majority of libraries in Class V report to the state that they charge nonresident book borrowing fees. [Plaintiff's Brief on Appeal, Exhibit 17]

The average annual borrowing fee charged nonresidents by Class V libraries is less than $70. [Plaintiff's Brief on Appeal, Exhibit 17]

Based on the number of housing units in the City, according to the US 2000

census, if every one paid $70 for a family nonresident library card, the Library would receive about $340,000 over 3 years, not $1.4 million dollars.

Plaintiff served a Notice to Produce Documents to obtain the records needed by plaintiff's expert to calculate a nonresident borrowing fee. The Library refused to produce the records. Plaintiff then sought an order to compel the Library to provide the financial information. [Plaintiff's Brief on Appeal, Exhibit 16] The trial court did not rule on this or any other pending discovery motions filed by plaintiff.

In his motion for partial summary disposition plaintiff claimed the Library violated his constitutional rights, including rights under the 14th and 1st amendments, Article 8, section 9 of the Michigan constitution, and MCL 397.561a, authorizing libraries to collect nonresident borrowing fees to recover their actual costs in lending books to nonresidents. [Plaintiff's Motion for Partial Summary Disposition, Exhibit A]

The specific and only relief sought by Plaintiff in his motion was for the Library to [a] issue nonresident library cards to Plaintiff and other City residents who request a card [b] that if the Library elects to charge a nonresident borrowing fee the fee be calculated according to MCL 397.561a and [c] that the Library be restrained from causing 90 other libraries to agree not to loan their books to Plaintiff and other City residents. [Plaintiff's Motion for Partial Summary Disposition, Exhibit A, pp 4 and 5]

The trial court denied Plaintiff's motion, granted Summary disposition to the Library on its own motion under MCR 2.116 (I)(2) and closed the case. [Plaintiff's Brief on Appeal, Exhibit 22]

The Opinion of the Court of Appeals is attached to this Application For Leave to Appeal as Exhibit "A".

ARGUMENT

I. THE 1963 MICHIGAN CONSTITUTIONAL GUARANTEE THAT PUBLIC LIBRARIES "SHALL BE AVAILABLE TO ALL RESIDENTS OF THE STATE" INCLUDES A CONSTITUTIONAL RIGHT TO BORROW BOOKS, SUBJECT TO THE RIGHT OF LIBRARY GOVERNING BOARDS TO MANAGE, BUT NOT TO ABOLISH, THAT CONSTITUTIONAL RIGHT.

Standard of Review

Constitutional issues are reviewed *de novo* on appeal. *Mahaffey v Attorney General,* 222 Mich App 325, 334; 564 NW2d 104 (1997)

Analysis

According to the November 8, 2005 opinion of the Court of Appeals, after reviewing the 1963 Constitutional Convention record it concluded that:

> The language in Const 1963, art 8, section 9, when read in conjunction with the historical discussions elaborating the intent of its drafters, provides no support for plaintiff's assertion that libraries are constitutionally mandated to issue nonresident library cards or make accessible all services of local libraries to nonresidents.

The Court of Appeals ignored specific statements in the historical record that Const 1963, art 8, section 9 included a constitutional right to borrow books. Those statements were quoted by plaintiff and a part of the record on appeal. [Plaintiff's Reply to Appellee's Brief, filed with the Court of Appeals, pp 1-5]

The statements were prompted, in part, by the concerns expressed by Delegate Leibrand, a member of the Bay City Library Board of Trustees, about local libraries providing free service to nonresidents. He therefore moved to strike the words "which shall be available to all residents of the state" from the proposed Article 8, sec. 9 of the constitution. He explained the phrase meant to him that the service of any library shall be available, free, to all residents of the state or at least available to everyone on the same

terms as offered to the residents of the municipality which operates the library. He gave as an example the demands from adjoining townships and the City of Essexville to be given free library service. He argued that with the City of Bay City paying 80% of the operating costs, that would be "manifestly unfair."

The concern expressed by delegate Leibrand related to **service.** Delegate Bentley responded to delegate Leibrand's concern about service by saying the matter "should be handled by appropriate legislation."

Delegate Bentley said he supported the language "making free public library ***service*** available to all residents of the state" but that "we recognize there must be qualifications, there must be reservations, there must be individual problems which must be met" that should be left " up to legislative and statutory action."

Delegate Andrus said she spent a great deal of time talking to members of the state board for libraries, library association members and a broad array of librarians from different parts of the state. She discussed the availability of library books to Michigan residents who live outside the community where the library is located. She described the Detroit Library service agreement. Then she said:

> Birmingham is doing the same. It would be done that way by the surrounding communities paying a certain amount to your library, and all could use it, ***or they can charge -- as Mr. Bentley just said, to the individuals who will use it.***

In responding to delegate Bentley, delegate Higgs clearly and specifically limited his statement to the constitutional right of nonresidents to borrow books from Michigan public libraries. He did not say or infer, that nonresidents had a constitutional right to free library **services,** which concerned delegate Leibrand, and rightly so. Delegate Higgs

said:

> **Well. Mr. Bentley, neither the Bay City Public Library nor any other public library of this state would have any power whatsoever by regulation and neither would the legislature have any power to pass any statute which would contravene the language which we are placing in the constitution. When you say, "which shall be available to all residents of the state,"** ***that is pretty clear. I don't see how we could possibly deny the availability of any books to any resident of the state of Michigan.***

Delegate Bentley responded by saying:

> What I am trying to explain, Mr. Higgs, -- and I am not a lawyer, as I have stated many times -- **but as long as a person from any part of the state can come to your library and conform to your local regulations and rules, he** ***can have*** **that library and its services** ***and its books made available to him.***

Delegate Bentley's statement was reflected in an amendment offered by delegate Dehnke who proposed to add to art. 8, sec 9:

> **under reasonable regulations -- which shall be available to all residents, under reasonable regulations. That would at least give the library board the authority to lay down some regulations to set up the hours during which the library will be considered open a*nd all that sort of thing.***

Delegate Leibrand failed in his efforts to have the words stricken. The record of the convention shows that n**o delegate,** including delegates Leibrand, Higgs, Bentley, Andrus or Dehnke, **ever proposed** that a library could use a regulation to keep Michigan residents not living in the library's community from borrowing its books.

Further, the record shows **no delegate ever challenged** the statement by delegate Higgs, either before the Dehnke "regulation" amendment was accepted, **or after,** that is was "pretty clear" that the language "which shall be available to all residents of the state" meant we [the delegates] could not possibly "deny the availability of **any** books to **any**

resident of the state of Michigan." [Plaintiff's Reply to Appellee's Brief, filed with the Court of Appeals, pp 1-5]

Delegates Bentley and Dehnke foreshadowed the common understanding of the voters that the language "which shall be available to all residents of the state, under regulations adopted by the governing bodies thereof" meant that library books are available to any person from any part of the state as long as that person conforms to "local regulations and rules."

Libraries can adopt local rules and regulations to manage a nonresident's constitutional right to borrow books in several ways, including limiting the number, the length of time, or even requiring a deposit. Libraries can also regulate use of other services provided to nonresidents and communities without a public library. For example, libraries can regulate use of meeting rooms, attendance at special events and similar services. {Plaintiff's Brief on Appeal, Exhibit 9]

Libraries can obviously adopt local rules and regulations to require communities or individual residents to pay to borrow their books, or for other services. But public libraries are nonprofit organizations. They are not profit centers. Any payments ought to be based on the actual costs incurred by the library.

The trial court said [Exhibit 22, p 3, Plaintiff's Brief on Appeal] that:

> The meaning of the term 'available' is not readily apparent.

Although the intent of the drafters of the constitution is important, and assuming the word "available" is ambiguous, as concluded by the trial court, the primary rule that applies is to determine the "common understanding" of the voters who ratified the constitution. In making that determination each relevant word in the constitution should

be given the "meaning which it would naturally convey to the popular mind." *Committee for Constitutional Reform v Secretary of State,* 425 Mich 336, 340-341; 389 NW2d 430 (1986); *Regents of the Univ of Michigan v Michigan,* 395 Mich 52, 60; 235 NW2d 1 (1975).

Evidence of the "common understanding" of the voters may be ascertained from the "times and circumstances" surrounding the ratification of the constitutional provision and the purposes sought to be accomplished, *Soap & Detergent Ass'n v Natural Resources Comm.,* 415 Mich 728, 745; 330 NW2d 346 (1982. It is also appropriate to consider what the constitutional convention delegates discussed when adopting the constitutional language. *Committee for Constitutional Reform,* supra.

Among the "times and circumstances" of 1963, and before, were the well known facts that public libraries had long been referred to as lending or circulating libraries, that library cards are not needed to enter, browse and read at any public library, and that library cards were essential, and had been for years, to borrow books.

Evidence of a "common understanding" that books were loaned to Michigan residents who lived outside the library's community is shown by the statements of the constitutional convention delegates. Delegate Leibrand, for example, complained of the free use of Bay City Library services by the nonresidents of Essexville and of the adjoining townships, who paid nothing to support the Bay City Library. Delegate Andrus spoke about libraries loaning their books to nonresidents. She said she had met with members of library associations and with librarians to discuss library services, including the borrowing books. She received information from an array of individuals with extensive library experience. Based on her research she gave the delegates specific

examples of public libraries loaning books to nonresidents. She described the policy of the Detroit Public Library, located in the heart of a metropolitan area with millions of people, to loan books to nonresidents. She told of a similar practice at the public library in Birmingham, Michigan, She explained that other public libraries could contract with communities without a public library of their own to make their services and books available to nonresidents, like the Detroit and Birmingham libraries had done. **She also said nonresident users could be charged directly.** Delegate Bentley said that if a nonresident complied with the library's **regulations** he can have "its books made available to him." There were no challenges to these statements of delegates Andrus and Bentley that libraries were free to contract with communities and free to adopt regulations to manage book borrowing by individual nonresidents. [Plaintiff's Reply to Appellee's Brief, pp 1-5, filed with the Court of Appeals]

Further, Plaintiff and other residents of the City had been borrowing books from the Library for years, back to about 1963, under a contract with the City that regulated the terms and conditions of nonresident borrowing.

According to Justice Cooley, as stated in *Durant II,* 238 Mich 210, the interpretation that should be given to the Constitution is that which the reasonable minds, the great mass of people themselves, would give it. Justice Cooley said, in part, that:

> the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark and abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed. 1 Cooley, *Constitutional* Limitations (8th ed), p 143)

The dictionary definition of the word "available" is "that can be used, that can be

got or had, handy." *Webster's New World Dictionary and Thesaurus* (1996).

One cannot think of libraries without thinking of the availability of books. Reasonable minds would understand that the constitutional guarantee that libraries "shall be available to all residents of the state" meant that libraries and their books would be available for use by all residents of the state.

Further, there are no facts to support an interpretation that "the reasonable minds, the great mass of the people themselves" looked for a "dark and abstruse meaning" of the word "available."

There are no facts that show there was a "common understanding" in 1963 among the voters that they understood "available" to mean every Michigan public library would have the right to abolish all nonresident library cards, do away with the established statewide practice of allowing nonresidents to borrow library books, or could collaborate to force communities or individuals to pay what they demand to make their books available to nonresidents but could refuse to limit, explain or justify the payments demanded of individuals or communities to borrow their books, that public libraries could collect *ad valorem* taxes from nonresidents or communities under the guise of payments to borrow their books, or that public libraries could treat residents of the same community differently, lend books to some of the residents of the community but not to others.

There is no basis to assume that in 1963, when the voters approved the new Constitution, that they looked for these "dark and abstruse" meanings and consequences of the word "available" yet all of these consequences are allowed by the decision of the Court of Appeals.

The evidence is very persuasive that in 1963 the word "available" was understood by the voters "in the sense most obvious to the common understanding", that libraries and their books would be available for use by all residents, and that they "ratified the instrument in the belief that that was the sense designed to be conveyed." 1 Cooley, *Constitutional Limitations* (8th ed, p 143)

Several laws were enacted pursuant to the mandate in Const 1963, art 8, sec 9 that the Legislature shall provide for the establishment and support of public libraries.

On August 2, 1977, the state adopted Public Act 89, the State Aid to Public Libraries Act, MCL 397,551, to establish cooperative libraries to provide services to eligible public library members. To be eligible for membership in a cooperative library a public library is required to "Maintain an open door policy to the residents of the state, as provided by Article 8, section 9 of the state constitution of 1963."

The Library argues that the state would not have required an open door policy if the constitution had already provided an open door. In other words the open door language of the statute would be surplusage.

The Library's argument overlooks the plausible interpretation that the language was not surplusage, that its purpose was to warn libraries if they did not maintain an open door they would not be entitled to the benefits of membership in a library cooperative.

The Library's argument also overlooks the traditional rule that courts will read statutes so as to produce a harmonious and consistent result. Courts will avoid a statutory construction that renders any portion of a statute surplusage or nugatory. *Macomb County Prosecutor v Murphy,* 464 Mich 149, 159-160; 627 NW2d 247 (2001)

On January 11, 1985, the state legislature adopted MCL 397.561a. This amendment to the 1997 Act, MCL 397.551, tracks the Attorney General's Opinions given to the Legislature in 1980 and 1983 that book borrowing was a constitutional right, that public libraries had discretion to charge a nonresident book borrowing fee "in making borrowing privileges available to nonresidents", but if the fee exceeded the library's actual costs the excess would be an illegal tax.

It is significant that the Legislature used the words "in" and "privileges" in this nonresident borrowing fee amendment to the *State Aid To Public Libraries Act,* supra. "In" making borrowing privileges available is not the same as saying "if" since "if" shows an intent to confer discretion. The Library seeks to substitute "if" to support its argument that libraries have discretion to lend books to nonresidents. However, nothing should be read into a statute that is not within the clear intent of the Legislature. *Halloran v Bhan,* 470 Mich 572; 683 NW2d 129 (2004).

Black's Law Dictionary defines "privilege" as a "right, power, franchise, or immunity held by a person or class, against or beyond the course of the law." *Webster's New World Dictionary and Thesaurus,* defines "privilege" as a right given to a person or group. Privileges include the privilege against self-incrimination, the physician/patient privilege and the attorney/client privilege.

The Legislature selected the word "privilege" to make clear it intended to give nonresidents the right to borrow books. This right cannot be taken away by library regulations any more than a prosecutor, doctor or lawyer can take away the rights of an accused, a patient or a client.

As stated in *Halloran,* supra, every word or phrase of a statute should be

accorded its plain and ordinary meaning. Further, according to *Macomb County Prosecutor v Murphy,* 464 Mich 149, 159-160; 627 NW2d 247 (2001), the rule of statutory interpretation is that laws are to be read so as to produce a harmonious and consistent result. These two statutes are harmonious and consistent. They are also harmonious and consistent with Const 1963 art. 8, section 9.

It is reasonable to conclude that all Michigan residents have a constitutional right to borrow books from any Michigan Public Library, subject to the library's right to manage the borrowing by rules and regulations, including the discretion granted to public libraries by MCL 397.561a to impose and collect a nonresident borrowing fee calculated according to that statute.

II IT IS A VIOLATION OF CONSTITUTIONAL RIGHTS, INCLUDING THE EQUAL PROTECTION CLAUSES OF THE FEDERAL AND STATE CONSTITUTIONS, FOR A PUBLIC LIBRARY TO ALLOW SOME RESIDENTS TO BORROW BOOKS BUT NOT ALLOW OTHER RESIDENTS OF THAT SAME COMMUNITY, SIMILARLY SITUATED, TO DO SO.

Standard of Review

Constitutional issues are reviewed *de novo* on appeal. *Mahaffey v Attorney General,* 222 Mich App 325, 334; 564 NW2d 104 (1997)

Analysis

The Court of Appeals summarily rejected plaintiff's equal protection claims for failure "to adequately provide citation to authority or argument consistent with his claim of an equal protection violation", citing *Tingley v Wardrop,* 266 Mich App 233; ___ NW2d ___ (2005).

Denying a claim of an equal protection violation for being inadequately presented

is not appropriate where, as here, the constitutional issues raised affect the rights of 10,000,000 residents of Michigan, directly or indirectly, and were briefed in the lower and appellate courts. [Plaintiff's Motion for Partial Summary Disposition, p 2; Plaintiff's Brief in Support of its Motion, pp 1, 7-12; Plaintiff's Brief in Support of its Appeal of Right, pp v, 1, 24, 25]. Moreover, this court has the right as part of its policy power to consider any relevant statutory and constitutional provisions whether raised by the parties or not.

Further, the Library admitted that it was subject to both the 14th and 1st amendments, thus making citation and argument unnecessary as to whether those amendments applied.

The Court of Appeals ignored the equal rights case cited by plaintiff, *Melissa Ludtke and Time, Inc., v Bowie Kuhn, Commissioner of Baseball, et at,* 461 F Supp 86 (US Dist Ct., S.D. New York 1978). Plaintiff also cited *Harville v State Plumbing and Heating,* 218 Mich App 202, 305-306 (1996) as authority that the equal protection clause in our constitution, Article 1, sec 2, is coextensive with the federal equal protection clause.

Whether the equal protection clause has been violated generally arises when a public body, such as a public library , grants a particular class of individuals the right to engage in an activity yet denies the same right to other individuals who are similarly situated. *Phillips v MIRAC,* 470 Mich 415; 685 NW2d 174 (2004)

In *Ludtke,* supra, the court found that defendants violated plaintiffs' equal protection rights by treating sports reporters differently. Male reporters in the sports reporter classification were given full access to locker rooms but plaintiff, a female

reporter, was not given that same access, allegedly to protect the privacy of the male players. The court found that defendants could have granted her the same access by making alternate and available arrangements to protect the privacy of the male players.

Plaintiff cited that case to support his argument that the Library violated his equal protection rights by treating certain City residents differently. Residents of the city living at Cranbrook could borrow books because the Library contracted with Cranbrook for in-kind payments. At the same time, the Library refused to allow the other City residents to borrow its books solely because the City refused to pay what the Library demanded. It is undisputed, however, that MCL 397.561a gives the Library an alternate and available way to be paid all of its actual costs for letting the excluded residents borrow its books. In *Ludtke,* supra, the defendants' refusal to use alternate and available arrangements led the court to find a violation of the equal protection rights of those plaintiffs. Plaintiff cited *Ludtke,* supra, because he believes the uncontradicted facts he presents should lead to the same result.

Ludke, supra, and plaintiff's case are factually different from the cases cited by the Library to support its claim that it is entitled to give preferential treatment to its residents over residents of other communities. The cases cited by the Library involve governing bodies and residential restrictions on the use of schools, parks or recreational facilities. This is not that kind of a case. This is a case where a public body, the Library, treated all residents of one City equally and as a single class, for years. After almost 40 years, the Library treats a substantial majority of that same class, unequally.

The reason for the unequal treatment of City residents is the failure of the Library to persuade the City to sign a 3 year contract and pay a total of $1.4 million dollars to the

Library to allow all residents of the City to continue to borrow its books. When that effort failed, all City residents were barred from borrowing books from the Library and, as the Court of Appeals found, from 90 other area libraries as well. (November 8, 2005 Opinion, p 1)

Despite revoking all nonresident library cards it had issued to City residents, six months later, in April 2004, the Library signed a contract with Cranbrook. By this contract the Library receives an in-kind payment from Cranbrook and lets the city residents at Cranbrook borrow its books. All other residents, a substantial majority of the class, cannot borrow the Library's books only because the City will not pay what the Library demands.

The Library admits it does not need a contract with the City to be paid for letting the other City residents to borrow its books. MCL 397.561a gives the Library an absolute, undisputed right to require any City resident who wants to borrow its books to pay a nonresident borrowing fee. Although well aware of its rights under this statute, the Library **deliberately** refused to use this alternate and available way to be paid.

The Library and 90 other libraries conspired against plaintiff and other members of his class to exclude them from borrowing their books. By creating and participating in this policy of exclusion, the Library violates plaintiff's equal protection rights under the state and federal constitutions.

In *Ludke,* supra, cited by plaintiff, the court issued an injunction to restrain enforcement of the defendant's unconstitutional exclusion policy, **required** adoption of the alternate and available means and ruled that the excluded reporter Ludtke must be awarded counsel fees.

In addition to the relevancy of *Ludtke,* supra, plaintiff's claim that the Library violated his equal protection rights finds support in *Phillips,* supra, where the court discussed the kind of cases where courts intervene to decide equal protection issues.

The cases typically involve state statutes and courts "have been very guarded about overruling the legislatures' decisions by declaring unconstitutional the classifications that a legislature defined." The deference to the decisions of the legislative body, which represents and acts on behalf of all 10,000,000 residents in adopting statutes, is quite understandable.

In *Phillips,* supra, the court identified three classes of cases where the courts intervene; those requiring "strict scrutiny" review, those requiring "heightened scrutiny" review and those requiring "rational basis" review. Plaintiff referred to these three classes on page 24 of his Brief in Support of Appeal of Right.

Under "strict scrutiny", the Library is required to demonstrate that its classification of City residents has been precisely tailored and that it serves a compelling governmental interest. The classification of City residents into two groups is "suspect" if it involves constitutional rights under Const 1963, art 8, section 9, or rights under the 1st amendment, or both.

The Library has not demonstrated that its classification of City residents into two groups, after treating them equally for almost 40 years, serves any "compelling governmental interest." *Plyler v Doe,* 457 US 202 ; 102 S Ct 3282; 72 L Ed 2d 786 (1982)

The Library has negotiated in-kind payment from Cranbrook and allows City residents at Cranbrook to borrow its books. Under MCL 397.561a the Library can

require payment from excluded residents who borrow its books, but the Library **refuses** to use that statute. Classification of City residents into two groups, based on these facts, is "suspect". There is no "compelling governmental interest" that justifies the two classifications. The library regulation creating the classification falls to the Constitution. *Phillips,* supra.

The third kind of case involves the "rational basis" review. Under this test the Library regulation prohibiting plaintiff from borrowing its books will be upheld if the regulation is rationally related to a legitimate government purpose. *Crego v Coleman,* 463 Mich 248; 615 NW2d 218 (2000).

It is admitted by the Library that it based its payment demands on the *ad valorem* tax revenue it receives from township residents. The Library has no right of its own to directly or indirectly collect *ad valorem* taxes from nonresidents. Only the Legislature has the right to authorize taxes. Neither a state agency nor a subdivision of the state may impose a tax not authorized or mandated by law. *Const* 1963, art 9, sections 1 & 2.

The Library adopted a regulation that prohibited plaintiff from borrowing its books solely because the Library failed to obtain a payment it had no legal right to demand. The regulation is wholly unrelated any legitimate governmental purpose. *Smith v Employment Security Comm.,* 410 Mich 231; 301 NW2d 285 (1981). The regulation falls to the Constitution. *Phillips,* supra.

III. IT IS A VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS, INCLUDING THE RIGHT TO READ, PROTECTED BY THE 1ST AMENDMENT OF THE FEDERAL CONSTITUTIONAL, FOR THE TOWNSHIP PUBLIC LIBRARY TO PROHIBIT RESIDENTS OF THE CITY FROM BORROWING ITS BOOKS SOLELY BECAUSE IT FAILED TO

COLLECT PAYMENTS FROM THE CITY IT ADMITS WERE BASED ON WHAT REVENUE IT RECEIVES IN *AD VALOREM* TAXES FROM TOWNSHIP RESIDENTS.

Standard of Review

Constitutional issues are reviewed *de novo* on appeal. *Mahaffey v Attorney General, 222 Mich App 325; 564 NW2d 104 (1997)*

Analysis

The Court of Appeals rejected plaintiff's claim that the Library's refusal to allow him to borrow its books constituted a violation of his 1st amendment right to read, citing lack of authority and argument..

The Library admitted it is subject to the 1st amendment. Consequently there was no need for plaintiff to cite cases and argue that the 1st amendment applies to the Library.

This case is one of first impression; hence, the absence of any case authority precisely on point cannot be expected or required.

Given the general and well known legal principle that the 1st amendment protects a right to read, plaintiff relies on a common sense assumption that any unreasonable limitation on that right violates the 1st amendment. Plaintiff argues that just as arbitrary censoring of the content of a book violates the 1st amendment right to read, the right to read is also violated by an arbitrary restriction on the circulation of the books themselves.

To insure that there be access to books and other sources of information, the United States Supreme Court ruled in 1943 that there is a constitutional right to receive information.. *Martin v Struthers,* 319 U.S. 141. (1943)

In *Salvail v Nashua Board of Education,* 469 F. Supp. 1269 the court ruled that

the Board of Education failed to demonstrate a substantial and legitimate government interest sufficient to justify the removal of library material, a magazine, from the shelf of the school library. The court ruled the removal was arbitrary and violated plaintiff's 1st amendment right to read.

While *Salvail,* supra, is not precisely on point, plaintiff believes it is nonetheless useful authority in his case. Both cases involve unavailability of library materials. In *Salvail,* supra, it was removal and unavailability of a magazine. In plaintiff's case it is the removal and unavailability of thousands of books from circulation. In both cases the constitutional right to read is diminished and violated.

The admitted reason for removing the books from circulation is the failure of the Library to obtain the $1.4 million dollar contract with the City. Under *Salvail,* supra, the test is whether having that contract is such a substantial and legitimate government interest that it justifies the Library, when it failed to get it, to limit plaintiff's constitutional right to read.

In applying that test, the nature of the payment itself must be examined to determine whether it was the kind of payment the Library was entitled to demand.. If not, the Library would have no substantial and legitimate public interest to justify its regulation prohibiting plaintiff from borrowing its books. *Salvail,* supra.

In *Bolt v The City of Lansing,* 459 Mich 152, 154, 158-159; 587 NW2d 264 (1968) this court said that:

> Generally a "fee" is exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit. A "tax", on the other hand, is designed to raise revenue.

Bolt, supra, makes no distinction between fees received **by contract** or fees received directly from individuals. In either case if what is received bears no reasonable relationship to the value of the service or benefit, it is a "tax".

The power to tax rests solely with the state legislature. *Constitution,* 1963, art 9 sections 1 and 2 . A public library has no power to tax on its own.

In 1983 in Opinion No 6188 the Attorney General advised the Legislature that:

> Imposition of nonresident borrowing fees by a library board as a means of recouping any integral library expenses may represent an attempt to provide for the general support of the library . It is demonstrable that local library boards are not expressly authorized by Const 1963, art 8, section 9 to promulgate rules imposing fees for the general support of public libraries.

The Court of Appeals dismissed the Attorney General's Opinion as being merely "informative' even though the Opinion was incorporated by the state legislature in the nonresident borrowing fee statute. That statute gives public libraries discretion to impose a nonresident borrowing fee "in" lending books to nonresidents, not "if" **and limits the fee to actual costs** incurred in the borrowing of its books.

The Library **admits** the payment demanded was **based on ad valorem tax revenue** it received from township residents. During discovery plaintiff sought access to the Library's financial records to determine what part of its $1.4 million dollar demand would represent its actual book borrowing costs and what part would be "revenue" and therefore a tax under *Bolt,* and *AGO* 6188, supra.

The Library refused to disclose it records to allow plaintiff's expert to examine its books, claiming the questions were "hypothetical." All discovery requests, including this one, were aborted by the sua sponte granting of summary disposition to the Library.

The Library's $1.4 million dollar demand, tied as was to ad valorem taxes, is a patent and illegal attempt to levy an *ad valorem* tax on City residents. When it failed, as it should have, the Library immediately punished City residents by revoking their library cards to eliminate book borrowing not only at its library but also at 90 other area libraries as well.

Michigan libraries are classified by the state based on the population they serve. The average nonresident borrowing fee charged by a majority of public libraries in the Library's class, Class V, is less than $70 per year. [Plaintiff's Brief on Appeal, Exhibit 17] If **every** household in the City [official 2000 US Census] applied for a nonresident library card and paid the average fee of $70, the Library would receive approximately $340,000 over three years, not $1.4 million. The Library's demand of $1.4 million dollars is more than $1,000,000 over what other libraries in Class V charge nonresidents to borrow books.

The Library had an opportunity during discovery to prove that extra $1,000,000 was reasonably related to the service or benefit it would have conferred on the City. *Bolt*, supra. However, it **refused** to do so.

The Library failed to demonstrate a substantial and **legitimate** government interest sufficient to justify its refusal to lend plaintiff its books. The payment demanded was illegitimate, it was an admitted attempt to collect *ad valorem* taxes from City residents, and it was "revenue" that had no reasonable relationship to the cost of lending its books, *Bolt,* supra.

The Library's failure obtain $1,4 million dollars was the sole reason it, and 90 other area libraries, refused to lend their books to plaintiff and other City residents.

The Library's refusal to allow plaintiff to borrow its books, under these facts and circumstances, was unjustified. The refusal was based illegal reasons, served no legitimate government interest, and violated plaintiff's 1st amendment right to read. *Martin* and *Salvail,* supra.

Conclusion

The Library's admission that loss of the contract with the City had only minimal affect on its budget, seriously impairs the argument that a constitutional right to library cards will cause financial loss to libraries by impairing their ability to obtain contracts with communities having no library of their own. Constitutional rights do not depend on profits or losses. Furthermore, contracts with libraries and the use of nonresident library cards have existed side by side for years in this state. There are no **facts** in this case proving that this long established practice has caused any loss to public libraries.

This issue of alleged financial loss by public libraries was first introduced at the trial court level by two affidavits from the same two groups that filed *amicus curiae* briefs in the Court of Appeals. Plaintiff filed objections to the filing of the affidavits because they improperly raised issues of alleged financial losses by other public libraries, an issue that had not been raised in the case by plaintiff. In the Court of Appeals these same issues were improperly raised in the *amicus curiae* briefs. Under MCR 7.213 (H) *amicus curiae* briefs are limited "to the issues raised by the parties." Plaintiff never raised the issue. Nor did the Library. To the contrary, the Library admitted loss of the contract with the City had "minimal" affect on its budget.

There is **no proof** that any public library lost money, or any opportunity to contract with communities, as a result of books being borrowed directly by nonresidents.

This case provides this Honorable Court with an opportunity to clarify the law relating to our public libraries, to define their rights and obligations, and to establish a policy to govern use of our public libraries by all 10,000,000 residents of our state.

Plaintiff respectfully suggests that the following are the critical policy issues:

[a] whether a resident of a community not having its own library has a constitutional right to a nonresident library card;

[b] whether a community not having its own library can be coerced into accepting a library service contract by a library's refusal to issue nonresident library cards;

[c] whether issuance of nonresident library cards can be conditioned on payments other than the actual costs of issuing library cards as defined and limited in MCL 397.561a;

[d] whether payments under a library service agreement with a community not having its own library, are illegal if based on *ad valorem* taxes or exceed the value of the service or benefit conferred;.

[e] whether public libraries as a group can refuse to issue nonresident library cards to coerce a community not having its own library, to enter into a library service agreement with any member of that group;

The Court of Appeals decision addressed only the first of these issues. The decision speaks exclusively and at length about why our public libraries can restrict use of their books. Unfortunately there is little said to provide guidance as to the other issues of enormous importance, that are now ripe for decision.

Relief

For the foregoing reasons, Plaintiff George H. Goldstone, respectfully requests that this Honorable Court grant his Application for Leave To Appeal so that this court may fully address the important constitutional issues he raised.

Alternatively, plaintiff requests that this Honorable Court reverse the decision of the Court of Appeals, provide a policy that clarifies the rights and obligations of public libraries, and remand this case to the trial court for an order consistent with its Opinion, and directing the trial court to restrain the Library from participating in the denial of book borrowing by plaintiff from other public libraries and to award plaintiff his costs and expenses, including reasonable counsel fees.

Respectfully submitted,

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Dated: December 19, 2005

EXHIBIT "A"

STATE OF MICHIGAN

COURT OF APPEALS

GEORGE H. GOLDSTONE,

Plaintiff-Appellant,

v

BLOOMFIELD TOWNSHIP PUBLIC LIBRARY,

Defendant-Appellee.

FOR PUBLICATION
November 8, 2005
9:10 a.m.

No. 262831
Oakland Circuit Court
LC No. 04-060611-CZ

Before: Owens, P.J., and Fitzgerald and Schuette, JJ.

FITZGERALD, J.

Plaintiff, George H. Goldstone, is a resident of the city of Bloomfield Hills (the city). He brought a declaratory judgment action asking the court to require the Bloomfield Township Public Library to grant him and other residents of the city "full, equal and free admission to the same library materials, programs, services, and activities that [defendant] gives to Bloomfield Township residents who support their library by local taxes." This occurred after the city and defendant had been unable to agree on a service contract. The trial court granted summary disposition in favor of defendant, and plaintiff appeals as of right. We affirm.

FACTS

Defendant is a public library in Bloomfield Township. From 1964 to November 12, 2003, the library had a contractual agreement with the city that, for a fee, permitted city residents full access to the library. On November 12, 2003, the contract between the library and the city expired as a result of their inability to agree on a contract fee. As a result of the expiration of the contract, plaintiff and other city residents can visit the library and have access to its materials on-site, but are prohibited from borrowing library materials and from having full-access to on-line databases and other programs, services, and activities that are regularly available to township residents. Additionally, borrowing privileges at ninety additional area libraries are not available to plaintiff and city residents because of the loss of the contractual relationship with the library.

On May 27, 2004, plaintiff requested a nonresident library card and offered to pay a borrowing fee. Defendant denied the request because plaintiff is not a resident of Bloomfield Township and resides in a city that does not have a service contract with defendant. Plaintiff then filed a complaint for declaratory relief, seeking a determination that defendant is required by Constitution or statute to issue plaintiff a nonresident library card and thereby give him equal access to the library and its resources as that afforded to township residents. While

acknowledging defendant's right to impose a nonresident borrowing fee, plaintiff sought the court's determination of the statutorily mandated parameters and limitations on the fees that could be charged.

Following a hearing, the trial court denied plaintiff's partial motion for summary disposition and granted defendant's motion for summary disposition. The court ruled that the library's determination to only permit nonresident borrowing in accordance with the execution of a contractual agreement with a nonresident's community does not violate Const 1963, art 8, § 9 and that it is not a denial of equal protection for the library to provide preferential treatment to its own residents and deny borrowing privileges to nonresidents.

Const 1963, art 8, § 9

Plaintiff argues that the trial court erred in determining that Const 1963, art 8, § 9, does not require defendant to allow plaintiff or other nonresidents to borrow books.[1] A trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank,* 468 Mich 557, 561; 664 NW2d 151 (2003). Similarly, the interpretation, application, and constitutionality of statutes are questions of law that are reviewed de novo. *Eggleston v Bio-Medical Applications of Detroit, Inc,* 468 Mich 29, 32; 658 NW2d 139 (2003).

Plaintiff contends that the plain and ordinary meaning of Const 1963, art 8, § 9, requires public libraries to allow all state citizens, regardless of area of residency to borrow books. Const 1963, art 8, § 9, provides:

> The Legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.

The primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. *Wayne County v Hathcock,* 471 Mich 445, 468; 684 NW2d 765 (2004). While legal or technical terms should be assigned their legal or technical meanings, to understand or discern the intent of those ratifying the provision, this Court's focus is to determine and effectuate the common understanding of the text at the time of its ratification. *Id.* at 468-469; see also *Phillips v Mirac, Inc,* 470 Mich 415, 422; 685 NW2d 174 (2004). Additionally, to clarify meaning, the circumstances surrounding the adoption of a constitutional provision and the purpose sought to be accomplished may be considered. *Comm for Constitutional Reform v Secretary of State,* 425 Mich 336, 340; 389 NW2d 430 (1986).

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[1] For the sake of simplicity, use of the phrase "borrow books" in this opinion also encompasses those library services provided to residents but not to nonresidents.

In support of his argument plaintiff relies on the interpretation of Const 1963, art 8, § 9, in 1980 OAG 5739:

> [T]he right of state residents to use the facilities of any public library includes not only the right to enter a public library and read books there, but the same right to borrow books that is offered to residents of the community in which the library is established . . . .

While informative, this interpretation is not dispositive. *People v Waterman,* 137 Mich App 429, 439; 358 NW2d 602 (1984).

The specific language of Const 1963, art 8, § 9, reveals a clear intent that libraries "be available to all residents of the state." But this mandate is not without restrictions in that libraries are authorized to impose "regulations adopted by the governing bodies thereof." Thus, libraries are imbued with the discretion to adopt regulations pertaining to the library's governance, functioning, and management of its resources. This language does not coincide with plaintiff's interpretation of the provision to mean unfettered or free access.

Further, in contradiction to plaintiff's position, the attorney general's interpretation of this provision does not require a determination that nonresidents are entitled to all public library privileges enjoyed by residents of the community where the library is located, subject only to imposition of a reasonable borrowing fee. A review of attorney general opinions demonstrates an historical recognition of the authority of public libraries to govern and restrict the use of their resources. 1997 OAG 5180 addressed the use of penal fines to pay for library services. In that opinion, it was recognized that:

> A township or charter township is empowered to contract with any other governing body for any services for which it could by law provide for its residents. Because a township may provide a library for its residents in the manner authorized by law, it may therefore, when authorized, provide for library services by contracting with any governing body to provide those services.

Implicit in this opinion is the recognition that full library services are subject to contractual agreements and that, absent such an agreement, nonresidents do not have unfettered access to library resources. And 1980 OAG 5739 indicates in relevant part:

> Under the constitutional mandate . . . the right of state residents to use the facilities of any public library includes not only the right to enter a public library and read books there, but the same right to borrow books that is offered to residents of the community in which the library is established *subject to reasonable regulations.* (Emphasis added).]

Additionally, it was recognized that "the framers intended that each local governmental unit which operates a public library may prescribe reasonable rules and regulations governing availability of its library services." *Id.* This recognition of restrictions on use, and the right of local libraries to establish their regulations, was again recognized in evaluating interlibrary loan programs. In evaluating the imposition of fees on nonresidents for use of borrowing privileges at local libraries, the attorney general recognized:

> [T]hat the framers intended that the constitutional grant of authority to adopt regulations relating to the availability of library services be restricted to those persons who resided in townships which do not have a public library and which are not under contract with a public library for the provisions of full library services for its residents.
>
> * * *
>
> MCL 397.214 . . . empowers cities, incorporated villages and townships operating free public libraries to contract with townships for full use of such library by its residents . . . [1981 OAG 5896.]

Importantly, the opinion stated:

> Recognizing that the Legislature had implicitly authorized library boards to license potential borrowers of books, Const 1963, art 8, § 9 must be read to include authority to impose fees upon those nonresident users seeking to borrow from a library who are not eligible to receive full library services under existing contract with the library. [*Id.*]

The opinion recognizes that local libraries are "authorized," to impose fees, not mandated, which coincides with the explicit language of Const 1963, art 8, § 9, permitting governing boards to determine the manner of regulating library resources.

A review of the historical perspective offered by the development and drafting of Const 1963, art 8, § 9, provides further support for the conclusion that this constitutional provision does not require public libraries to permit nonresidents to borrow books. Notably, Const 1963, art 8, § 9, is a revision of a prior provision requiring the existence of "at least 1 library in each township and city." Const 1908, art 11, § 14. Acknowledging the financial impracticality of requiring every community to establish and maintain its own library, coupled with the reality that the constitutional provision had not been enforced, the delegates drafting what was to become Const 1963, art 8, § 9, expressed an intent to maintain the current system of libraries "without fixing how or where the libraries themselves shall be organized." The specified intent was to "make libraries more available to the people their services may be expanded through cooperation, consolidation, branches and bookmobiles." 1 Official Record, Constitutional Convention 1961, p 822. In discussions pertaining to the proposed language of the provision, a delegate succinctly indicated a concern, that:

> By implication at least, the phrase, 'which shall be available to all residents of the state,' means to me that the service of any library shall be available, free, to all residents of the state, or at least shall be available to everyone on the same terms as offered to the residents of the municipality which operates the library. Now, I feel that this may very well place an undue burden upon existing libraries. [1 Official Record, Constitutional Convention 1961, p 834.]

Elaborating, the delegate noted, by way of example, that although Bay City maintained a local library, supported by its taxpayers, it was surrounded by a number of communities whose populations in total would exceed that of Bay City, which he feared would, by the language of

the provision, "be obligated to provide free library services for these adjoining townships and . . . city." The delegate argued that it would be inequitable for Bay City to provide the substantial majority of the funding to maintain its public library without commensurate financial contribution by nonresidents utilizing and accessing the same library services. 1 Official Record, Constitutional Convention 1961, p 834.

In response, drafters of the provision indicated that their intent was to have the constitutional provision be "as broad and general in scope as possible," while recognizing that:

> The present language emphasizes that public libraries will be available to residents without fixing how or where the libraries themselves shall be organized. The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books. [1 Official Record, Constitutional Convention 1961, p 835.]

Another delegate affirmed the understanding, indicating that the language of the provision, while assuring that libraries be "available . . . doesn't say free." 1 Official Record, Constitutional Convention 1961, p 835. Another delegate noting the intent to assure emphasized this:

> [T]he library services, whether . . . through branch libraries, bookmobiles or what else you have, may be extended to those residents of the state who are not now adequately provided with library services. But I repeat, that so far as working out the rules for individual libraries to govern the use and control of their books, the committee felt that this matter was and should be statutory. [1 Official Record, Constitutional Convention 1961, p 835.]

Analogizing the availability of public libraries to access to local courts, a delegate indicated:

> [T]he only thing that we are changing here is the fact that since it is not practical that every township have a library, we say that they shall be available to the citizens of the state of Michigan. . . . But remember, they must live in the jurisdiction. There are a lot of things that they have to qualify. Just because we say that it is available doesn't mean that there are no standards. [1 Official Record, Constitutional Convention 1961, p 836.]

Addressing concerns pertaining to the language of the proposed provision, before its acceptance, it was again acknowledged that:

> The committee on education's understanding is that this merely refers to regulations regarding the accessibility of libraries to the general public, and the committee assumes that the intent of the committee on style and drafting was that these governing bodies be of a local nature, . . . but that the intent of the committee on style and drafting would be that local governing bodies of these various public libraries would be able to pass reasonable regulations regarding the accessibility and the availability of their individual libraries to residents of the state; particularly, I suppose, in cases where the applicant for a book or a periodical was not an immediate resident of the locality. [2 Official Record, Constitutional Convention 1961, p 2561]

Importantly, the delegates agreed that:

> [T]here is nothing in the constitution which would permit a resident of any other part of the state to come into your library . . . and demand services which were contrary to the regulations which you laid down yourself for the use and control of your books. [1 Official Record, Constitutional Convention 1961, p 836.]

The language in Const 1963, art 8, § 9, when read in conjunction with the historical discussions elaborating on the intent of its drafters, provides no support for plaintiff's assertion that libraries are constitutionally mandated to issue nonresident library cards or make accessible all services of local libraries to nonresidents.

The State Aid to Public Libraries Act, MCL 397.551 *et seq.*

Plaintiff asserts that various statutory provisions, including but not necessarily restricted to those comprising the State Aid to Public Libraries Act, MCL 397.551 *et seq.*, require defendant to issue nonresident library cards.

1877 PA 164, as amended by 1998 PA 77, regarding the "establishment and maintenance" of libraries was enacted "to authorize cities, incorporated villages, and townships to establish and maintain, or contract for the use of, free public libraries and reading rooms; and to prescribe penalties and provide remedies." MCL 397.206 elaborates that:

> Every library and reading room established under this act shall be forever free to the use of the inhabitants where located, always subject to such reasonable rules and regulations as the library board may adopt; and said board may exclude from the use of said library and reading room any and all persons who shall willfully violate such rules.

This statutory provision restricts the "free" component of a local library to "the use of the inhabitants where located," thereby granting unrestricted use only to those individuals enjoying residential status. MCL 397.2131(1) distinguishes between the existence of a free library and the "use of library services":

> Notwithstanding a contrary city, village, or township charter provision, a township, village, or city adjacent to a township, village, or city that supports a free public circulating library and reading room under this act may contract for the use of library services with that adjacent township, village, or city.

Indicating that nonresidents, subject to a contractual agreement with a public library, are entitled to borrow books or enjoy full library services, MCL 397.216 provides:

> After fulfilling the contractual requirements, the people of a township, village, or city which has contracted for library services with another township, village, or city shall have all rights in the use and benefits of the library that they would have if they lived in the township, village, or city where the library is established, subject to uniform rules and regulations established by the board of library directors.

MCL 397.213 and MCL 397.216 would be completely unnecessary if public libraries were statutorily required to provide to nonresidents full access to all their services and materials on an unrestricted basis.

Plaintiff contends that the State Aid to Public Libraries Act, MCL 397.551 *et seq.*, mandates that defendant, and other local libraries, be freely available for nonresident use. The purpose of the act is "to provide for the establishment of cooperative libraries." The act does not purport to govern or direct the use or accessibility of local libraries by the general, or nonresident, public.

Plaintiff relies on MCL 397.555 to support his position. Specifically, plaintiff cites to MCL 397.555(d), which references an "open door policy to the residents of the state, as provided by section 9 of article VIII of the state constitution of 1963." Plaintiff asserts that this provision, in conjunction with Const 1963, art 8, § 9, mandates free availability of local libraries. In arriving at this interpretation, plaintiff ignores the plain language of this statutory provision, the purpose of which is to delineate local library membership eligibility in a cooperative library system. For section (d) of the act to apply, all eligibility requirements must be met. Specifically:

> To be eligible for membership in a cooperative library, a local library shall do all of the following:
>
> (a) Maintain a minimum local support of 3/10 of a mill on taxable value, as taxable value is calculated under section 27a of the general property tax act . . . .
>
> (b) Participate in the development of cooperative library plans.
>
> (c) Loan materials to other libraries participating in the cooperative library.
>
> (d) Maintain an open door policy to the residents of the state, as provided by section 9 of article VIII of the state constitution of 1963. [MCL 397.555.]

Primarily, this statute governs local library involvement in cooperative library networks and does not address, by language or implication, requirements for individual libraries to extend specified services to nonresidents. Further, the statutory provisions comprising MCL 397.551 *et seq.* relate solely to the "establishment of cooperative libraries" and the accessibility to those local libraries of state aid and support. Neither the title nor the content of individual provisions of MCL 397.551 *et seq.*, address requirements for the distribution or use of individual library resources.

Interpretation of the cited statutory provisions necessitates the use of well-established rules of statutory construction. Specifically, the purpose of statutory construction is to discover and give effect to the intent of the Legislature. To understand and discern our Legislature's intent we must begin by examining the language of the statute itself. *Neal v Wilkes,* 470 Mich 661, 665; 685 NW2d 648 (2004). When statutory language is unambiguous, this Court is to presume that the Legislature intended the plainly expressed meaning and judicial construction is neither permitted nor necessary. *DiBenedetto v West Shore Hosp,* 461 Mich 394, 402; 605 NW2d 300 (2000). In addition:

> [I]t is a well-established rule of statutory construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature. . . . Provisions must be read in the context of the entire statute so as to produce a harmonious whole. Two statutes that relate to the same subject or share a common purpose are in pari material and must be read together. [*American Federation of State, County and Municipal Employees v City of Detroit*,___ Mich App ___; ___ NW2d ___ (2005), (Docket No. 253592, issued July 5, 2005), slip op, p 8.]

The requirement of MCL 397.555(d), that a library involved in a cooperative "maintain an open door policy," is consistent with the interpretation of Const 1963, art 8, § 9, provided in Issue I, *supra.* An "open door policy" and "availability" indicate only accessibility to resources. This is accomplished by the library permitting access to resources on site. It does not mandate off-site access to nonresidents. An "open door policy" and "availability," merely by considering their plain and ordinary meaning, do not equate to unfettered or unrestricted access to library resources.

Plaintiff's contention that MCL 397.561a supports his contention that local libraries are required to provide full services upon payment of a borrowing fee is contrary to the actual language of the statutory provision. MCL 397.561a states, in relevant part:

> A library may charge nonresident borrowing fees to a person residing outside of the library's service area, including a person residing within the cooperative library's service area to which that library is assigned, if the fee does not exceed the costs incurred by the library in making borrowing privileges available to nonresidents including, but not limited to, the costs, direct and indirect, of issuing a library card, facilitating the return of loaned materials, and the attendant cost of administration.

First, this provision contains the term "may," which is routinely interpreted as being permissive or discretionary. Thus, the imposition of nonresident borrowing fees, as advocated by plaintiff, is not mandatory. Secondly, the statute implicitly acknowledges other provisions of MCL 397.551 *et seq.,* by noting that the borrowing fees may be imposed on individuals using cooperative library networks; it does not attempt to regulate individual or local libraries and their right to govern individual borrowing or service restrictions.

Further evidence that the imposition of restrictions to library materials for nonresidents is statutorily recognized and approved may be found in MCL 397.214, which provides, in relevant part:

> (1) Upon receipt of a petition signed by not less than 10% of the electors in any township based on the highest vote cast at the last regular election for township officers of the township, addressed to the township board, requesting that a meeting be called of the township, city, or village supporting and maintaining a free public circulating library and reading room under this act, or any special act, *for the use of its privileges by the residents of the township* . . . .

(2) Notwithstanding any contrary provision in a township, city, or village charter, the library board of directors of a township, city, or village supporting and maintaining a free public circulating library and reading room under this act, or under any special act, *may enter into a contract with another township, city, or village to permit the residents of that other township, city, or village the full use of the library and reading room, upon terms and conditions to be agreed upon between the library board of directors and the legislative body of the other township, city, or village.* [MCL 397.214 (emphasis added).]

In accordance with rules for construction and interpretation of statutory language, the plain and unambiguous language of this provision indicates both the ability of a local library to govern and regulate its resources and that full rights to borrow and utilize library resources are restricted based on residential status or participation in a contractual agreement. Additionally, the statutory language includes the term "may," which has historically been interpreted to be discretionary, as opposed to the term "shall," which is universally recognized as requiring mandatory adherence. *American Federation of State, County and Municipal Employees, supra,* slip op at p 3. Thus, plaintiff's contention that statutory mandates exist pertaining to nonresident borrowing privileges from local libraries is not supported by a review of the relevant statutory provisions, either standing alone or when read in conjunction with Const 1963, art 8, § 9.

Const 1963, art 1, § 2; US Const, Am XIV

Finally, plaintiff argues that defendant's refusal to grant him full access to the library's service, upon payment of a borrowing fee, is a violation of the equal protection clauses of Const 1963, art 1, § 2, and US Const, Am XIV. Plaintiff fails to adequately provide citation to authority or argument consistent with his claim of an equal protection violation. He fails to provide any relevant discussion pertaining to this issue and, instead, relies solely on his assertions regarding the interpretation of Const 1963, art 8, § 9, and MCL 397.551 *et seq.* "[T]his Court will not search for authority to support a party's position, and the failure to cite authority in support of an issue results in its being deemed abandoned on appeal. *Tingley v Wardrop*, 266 Mich App 233, 252; ___ NW2d ___ (2005).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens
/s/ Bill Schuette